IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4783 of 2002

with

SPECIAL CIVIL APPLICATION No 408 of 2002

For Approval and Signature:

HON'BLE MR.JUSTICE K.S.JHAVERI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MANHARLAL L VALAND

Versus

ABAD DAIRY

Appearance:

1. Special Civil Application No. 4783 of 2002
   MR JB DASTOOR for Petitioner No. 1
   MR KM PATEL for Respondent No. 1
2. Special Civil Application No. 408 of 2002
   MR KM PATEL for Petitioner No. 1
   MR JB DASTOOR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE K.S.JHAVERI

Date of decision: 20/07/2004

ORAL COMMON JUDGEMENT

1.0. Both these petitions are directed against the judgment and award made by the Industrial Tribunal, Ahmedabad dated 20th March, 2001 in Reference [I.T.] No. 125 of 1996 and hence, they are heard together and they are now disposed of by this common judgment.

1.1. Special Civil Application No. 4783 of 2002, has been filed by the original workman challenging that part of the award whereby, he has been denied 100% of the difference of the amount on account of revision of pay, though the order of 50% of the difference of amount on account of revision of the pay has been passed in his favour.

1.2. Special Civil Application No. 408 of 2002 is filed by Abad Dairy i.e. the employer of the concerned workman, challenging the award to the extent that it directs the petitioner - dairy to revise the payscale of the workman to Rs.1350-2200 from Rs.1200-2040 w.e.f. 1st January, 1986 and to pay 50% of the difference of amount on account of revision of pay.

2.0. The short facts of the case are that initially the workman was appointed as Compounder vide order dated 13th August, 1984 and was confirmed in the service on 23rd August, 1985(annexure-A). It is the say of the workman that as per Gujarat Civil Services Rules, 1987, his pay was revised to Rs.1200-2040/- w.e.f 1st January, 1986. The workman further submitted that the payscales were further revised to Rs.1350-2200 vide Circular dated 20th March, 1991 and the effect of revision of pay was given from 1st January, 1986. He, therefore, made several representations to the employer to grant him the pay as per amended Rules, but the employer did not grant the pay. Ultimately, the dispute was referred to the Deputy Commissioner of Labour, Ahmedabad for conciliation, but it failed and hence, Reference under the provisions of the Industrial Disputes Act, was made.

2.1. Before the Tribunal, both the parties adduced evidence, and after appreciating the material produced before it, the Tribunal partly allowed the Reference and directed the employer to revise the payscale to Rs.1350-2200 from Rs.1200-2040 w.e.f 1st January, 1986 and further directed to pay 50% of the difference of amount on account of revision of his pay. It is this award which is now under challeng before this Court in

the above petitions.

3.0. Mr. Patel learned advocate appearing for the employer submitted that the Tribunal has committed error in granting revision of payscale, in view of the fact that the issue was referred to the Tribunal by order dated 15th April, 1996, and the Tribunal have granted benefits which are prior to the date of Reference. Mr. Patel further submitted that because of the development, and globalization, voluntary retirement scheme was introduced twice whereby, 671 and 353 employees were relieved and at present only 180 workers are working. The production has also stopped since the year 1997.

3.1. Mr. Patel submitted that in view of the subsequent development that the Dairy is closed, the question of granting revision of payscale w.e.f. 1st January, 1986 is contrary to the well settled principle of law. In view of that Mr. Patel has relied upon the decision of this Court rendered in the case of Abad Dairy v. Manjibhai Dhanjibhai reported in 2000 (3) G.L.H. p.409, wherein it has been held as under :-

> "30. Considering the claim of regularization or reinstatement and backwages to the workmen, the financial condition of the Industry and its requirement for the jobs or posts cannot be overlooked. As a matter of fact, these are very relevant circumstances and might justify denial in a given case. In the instant case, admittedly, Abad Dairy is now a sick Unit. Due to competitive market in Gujarat its business has gone down so much that it is under tremendous financial strain. There are few job opportunities available with it. As has been pointed out in the reply-affidavit, the sale of milk in the year 1994-95 was 3 lacs litres per day which at the time of filing reply in the petition in the month of February, 1995 had gone down to hardly 45,000 litres per day. The statement on affidavit reads :-
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> > "With the sale of milk taking nose-dive as aforesaid, it was no longer possible for the respondent-Dairy to provide work to even its permanent workmen. Since large number of permanent

workmen were surplus in the Dairy, there is a burden of idle wages. The employer had to introduce voluntary retirement schemes resulting in 671 workmen availing the benefit of retirement. The adverse market conditions has financially crippled the dairy. It showed accumulated losses at the end of financial year 31st March, 1994 to the tune of Rs.27,75,03,767/-. As a result it was declared sick unit by the Board of Industrial and Financial Construction by order passed on 26-10-1994."

With going into the legal question whether the provisions of Section 22 (3) of the Sick Industrial Undertakings Act would bare any such proceedings at the instance of the workmen for regularization and back wages, we are clearly of the opinion that it would be highly unjust to grant workmen the relief of regularization and backwages as prayed by them which the sick unit is unable to provide.

31. In rejecting the claim of workmen, we are supported by the following observations of the Supreme Court in the case of SURENDRA KUMAR VERMA Vs. THE CENTRAL GOVERNMENT INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT, NEW DELHI AND ANOTHER reported in 1961 S.C.422. The relevant portion reads as under :-

"6..... But there may be exceptional circumstances which make it impossible or wholly inequitable to grant reinstatement with full backwages. For instance, the industry might have closed down or might be in severe financial doldrums; the workmen concerned might have been secured better or other employment elsewhere and so on. In such situations, there is vestige of discretion left in the Court to make appropriate consequential orders. The Court may deny the relief of reinstatement where reinstatement is

> impossible because the industry has closed down. The Court may deny the relief of award of full back wages where that would place an impossible burden on the employer....."

3.1. As against that Mr. Dastoor learned advocate for the workman has submitted that merely because the workman could not approach the Industrial Court because of the financial constraints, he should not be deprived of his legitimate right of getting the payscale w.e.f. 1st January, 1986.

4.0. Having carefully gone through the record of this petition and having carefully considered the submissions of both the learned advocates, it appears that the Industrial Tribunal, after considering the evidence adduced by both the sides, has rightly considered that since the workman was qualified, he was entitled for the payscale. Therefore, in my view, in a petition under Article 227 of the Constitution of India, this Court will not disturb the finding of fact of the Industrial Tribunal.

4.1. However looking to the peculiar facts and circumstances of the case, it appears that the Industrial Tribunal has granted payscale of Rs.1350-2200 w.e.f 1st January, 1986. In my view grant of payscale is justified but the date of effect could not have been earlier than the date of Reference. Therefore, the argument of Mr. Patel is required to be accepted in part and the order of the Industrial Tribunal is required to be modified to the extent that the workman will be entitled to the payscale of Rs.1350-2200 w.e.f 15th April, 1996 and difference of 50% of the amount on account of revision of payscales.

4.2. In the result, the petition of the workman i.e. Special Civil Application No. 4783 of 2003 is dismissed. Rule is discharged with no order as to costs.

4.3. So far as Special Civil Application No. 408 of 2002 is concerned. it is partly allowed. It is directed that the workman will get the benefit of the revised payscale of Rs.1350-2200/- but only w.e.f 15th April, 1996. It is further directed that the workman will be entitled for only the difference of 50% of the amount on account of revision of payscale. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]
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